

# Exhibit 3

VOLUME 7

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**Before The Honorable YVONNE GONZALEZ ROGERS, Judge**

EPIC GAMES, INC.,	)	
	)	
Plaintiff,	)	NO. C-20-5640 YGR
	)	
vs.	)	Tuesday, May 11, 2021
	)	
APPLE, INC.,	)	Oakland, California
	)	
Defendant.	)	BENCH TRIAL
	)	
APPLE, INC.,	)	
	)	
Counterclaimant,	)	
vs.	)	
	)	
EPIC GAMES, Inc.,	)	
	)	
Counter-Defendant.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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(Appearances continued.)

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1:17:55PM

**MR. EVEN:** I believe so, Your Honor.

1:17:57PM

**MS. DUNN:** Your Honor, same objection as --

1:18:01PM

**THE CLERK:** Let me turn on the mic.

1:18:04PM

1:18:06PM

**MS. DUNN:** Your Honor, same objection as yesterday with Dr. Evans, just to whether there will ultimately be a factual basis for the opinions. Otherwise, all other issues have been resolved.

1:18:12PM

1:18:15PM

1:18:17PM

**THE COURT:** Okay. Well, then, as with the others, I'll admit it once we have all these issues resolved.

1:18:21PM

1:18:25PM

Otherwise, it does not get admitted yet.

1:18:27PM

Proceed.

1:18:31PM

**MR. EVEN:** Thank you, Your Honor.

1:18:31PM

**BY MR. EVEN:**

1:18:33PM

**Q.** Professor Athey, what is your occupation?

1:18:35PM

**A.** I'm the economics of technology professor at the Stanford Graduate School of Business.

1:18:38PM

1:18:40PM

**Q.** Thank you.

1:18:41PM

And have you prepared a demonstrative slide that summarizes your background?

1:18:44PM

1:18:45PM

**A.** I have.

1:18:47PM

**MR. EVEN:** If I can bring up that slide. Thank you.

1:18:49PM

**BY MR. EVEN:**

1:18:52PM

**Q.** Can you please describe your educational background.

1:18:55PM

**A.** Yes. I have a bachelor's degree in economics, computer science, and mathematics from Duke University and a Ph.D. in

1:18:59PM

1:19:04PM economics from Stanford.

1:19:06PM Q. And when did you receive your Ph.D. from Stanford?

1:19:09PM A. In 1995.

1:19:12PM Q. How long have you been a professor?

1:19:14PM A. I've been a professor since then at Harvard, MIT, and  
1:19:20PM Stanford.

1:19:21PM Q. And how long have you now been at Stanford?

1:19:24PM A. Most recently, since 2013.

1:19:28PM Q. Have you won any awards, Professor Athey?

1:19:31PM A. I have.

1:19:32PM Q. Which awards have you won?

1:19:35PM A. I'm an elected member of the National Academy of Science,  
1:19:38PM and I've received the John Bates Clark Medal from the American  
1:19:41PM Economic Association.

1:19:44PM Q. And what is the John Bates award?

1:19:47PM A. It's for the economist -- American economist under the age  
1:19:50PM of 40 who has made the most significant contribution to  
1:19:53PM thought and knowledge.

1:19:56PM Q. Do you have a particular area of focus for your research  
1:20:02PM as a professor?

1:20:03PM A. Yes. Generally, industrial economics, the economics of  
1:20:06PM digitization, the economics of platforms and marketplace  
1:20:11PM design, and the intersection of machine learning and  
1:20:15PM econometrics.

1:20:18PM Q. Have you taught any courses related to the economics of

platforms?

**A.** Yes. I've taught a variety of courses to master students and Ph.Ds and MBAs, including the economics of digitization, topics in digital business, marketplaces for goods and services, the economics of digital platform markets.

And, broadly, these classes study the forces that -- sources of profits for firms, the tactics that incumbents use, and strategies that entrants might use to come into these markets.

**Q.** Thank you.

Do you do any work outside of academia?

**A.** I do.

**Q.** And can you please summarize for the Court your nonacademic work experience.

**A.** Yes. I was consulting chief economist for Microsoft for several years.

After that, I've served on boards of directors for a variety of companies, including Expedia, which is a platform for travel services; Rover, which is a platform for pet-related services, such as dog sitting; Turo, which is a platform for peer-to-peer car sharing; and some others.

I also advise a couple of venture capital firms on their investments in technology-related businesses.

**Q.** Thank you.

I see on the slide at the very bottom, it says "California

Governor's Council of Economic Advisors.

What is that?

**A.** That's a committee of academic economists who advise the governor of California on policy issues.

**Q.** Have you ever been retained as an economist by any government agencies?

**A.** Yes, I have, by the Department of Justice and the Federal Trade Commission.

**Q.** And have you ever presented to antitrust regulators in the U.S. or outside of the U.S.?

**A.** Yes, in many jurisdictions, including the United States, Europe, Canada, and others.

**Q.** Thank you.

**MR. EVEN:** Your Honor, at this time, Epic Games tenders Professor Susan Athey as an expert in industrial organization, platform economics, and the economics of technology.

**THE COURT:** Any objection?

**MS. DUNN:** No objection.

**THE COURT:** She's admitted as such.

**MR. EVEN:** Thank you, Your Honor.

**BY MR. EVEN:**

**Q.** Professor Athey, what have you been asked to do in this case?

**THE WITNESS:** Can you go to the next slide, please.

2:06:49PM it to me.

2:06:50PM **MR. EVEN:** Okay.

2:06:50PM **THE COURT:** Because you all know your case better  
2:06:52PM still, having lived with it for ten months, than I do. If  
2:06:57PM there is not a factual basis, I will not consider it and  
2:07:02PM it's -- and it will ultimately be stricken.

2:07:05PM But as I understood it, you all were still negotiating  
2:07:10PM over whether the factual basis is ever proved up in some of  
2:07:15PM these expert reports. So I'm relying, in part, on you all.

2:07:22PM **MR. EVEN:** And I appreciate that, Your Honor. I'm  
2:07:24PM just not sure what is the factual basis that we want now,  
2:07:27PM other than Professor Athey's general assessment as a professor  
2:07:31PM of technology and economics, as to the incentives and what  
2:07:36PM consumers may or may not do facing these incentives. That's  
2:07:42PM clearly in the report, Your Honor.

2:07:45PM **THE COURT:** Then if it is in the report, you're all  
2:07:47PM good.

2:07:49PM **MR. EVEN:** Okay.

2:07:53PM **THE COURT:** And I should say and it's still subject  
2:07:56PM to your ongoing negotiations about the factual basis.

2:08:03PM **MR. EVEN:** I understand, Your Honor. I just want to  
2:08:06PM make sure that I understand the objection, because my  
2:08:09PM understanding is that somebody who researches what consumers  
2:08:12PM and technology firms do for a living can come into court and  
2:08:16PM testify to that based on their expertise.



**THE COURT:** They can testify as to what they have disclosed.

**MR. EVEN:** Absolutely, Your Honor. I don't really think there is a disclosure issue here, but that's okay. I appreciate that. I'll move on.

**BY MR. EVEN:**

**Q.** Professor Athey, do you have any examples -- let me take a step back.

Obviously, we don't have a cross-platform app store right now, correct?

**A.** Yes, correct.

**Q.** And so have you seen any examples of a cross-platform store that sells something other than apps?

**A.** Yes. So going back in history, when you used to watch movies and shows on the iPhone, you would purchase individual movies on iTunes, but you could watch those on -- in the iOS system.

Today, there are services like *Amazon Prime Video* or *Netflix*. *Amazon Prime Video* at the beginning offered the same kind of service to iTunes except you would buy movies or shows one at a time, but it was cross-platform and so people could buy on one device and move to another. And that type of -- that type of cross-platform experience is also -- is an example.

Now, that's allowed, so *Netflix* and *Amazon Prime Video* are

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EPIC GAMES, INC.,	)	
	)	
Plaintiff,	)	NO. C-20-5640 YGR
	)	
vs.	)	Wednesday, May 12, 2021
	)	
APPLE, INC.,	)	Oakland, California
	)	
Defendant.	)	BENCH TRIAL
	)	
APPLE, INC.,	)	
	)	
Counterclaimant,	)	
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25

08:51:38 1 And so I had that relationship in 2008 and in one other  
08:51:46 2 subsequent period. I believe in 2011 or 2012.

08:51:57 3 Q. And was your employment for Microsoft or your relationship  
08:52:01 4 with Microsoft in 2008 and 2011 disclosed on your C.V. in this  
08:52:06 5 case?

08:52:06 6 A. Yes.

08:52:11 7 Q. Are you presently engaged by Microsoft on any antitrust  
08:52:14 8 matter?

08:52:14 9 A. No.

08:52:18 10 Q. Did you seek permission from Microsoft to serve as an  
08:52:21 11 expert in this case?

08:52:21 12 A. No.

08:52:26 13 Q. Did anyone at Microsoft ask you to serve as an expert in  
08:52:29 14 this case?

08:52:29 15 A. No.

08:52:35 16 Q. Did you get any direction from Microsoft about any of the  
08:52:38 17 opinions you voiced in this case?

08:52:41 18 A. No.

08:52:44 19 Q. Has Microsoft been your primary consulting client in  
08:52:47 20 recent years?

08:52:49 21 A. No.

08:52:49 22 Q. When was the last time that Microsoft was your primary  
08:52:52 23 consulting client?

08:52:53 24 A. It was scaling down during 2015, and so somewhere in that  
08:53:03 25 range.

08:53:06 1 Q. As far as you know, did your engagement by Epic have  
08:53:09 2 anything to do with Microsoft?

08:53:10 3 A. Not as far as I know.

08:53:23 4 Q. Ms. Dunn asked you some questions yesterday about your  
08:53:28 5 potential review of hypothetical confidential Apple documents  
08:53:33 6 that hypothetically said how many people switched from Android  
08:53:37 7 iOS or vice versa.

08:53:39 8 You remember that?

08:53:40 9 A. Yes.

08:53:41 10 Q. Is there public data concerning switching between iOS and  
08:53:45 11 Android?

08:53:46 12 A. Yes.

08:53:47 13 Q. And as a tech economist, platform economist, do you  
08:53:53 14 generally keep abreast of the data about switching between  
08:53:56 15 those two platforms?

08:53:57 16 A. Yes.

08:54:07 17 THE COURT: Is all of that evidence attached to your  
08:54:09 18 report? That is, is it a part of the record in this case?

08:54:16 19 MR. EVEN: I'm sorry. Which data is that, Your  
08:54:17 20 Honor?

08:54:19 21 THE COURT: What you just asked her about, the data  
08:54:21 22 about switching between the platforms. Is that data that is  
08:54:24 23 in the record in this case, Professor Athey?

08:54:27 24 THE WITNESS: I -- I don't want to misspeak, but I --

08:54:38 25 THE COURT: Well, and I just want to know what's in

08:54:40 1 the record.

08:54:45 2 **THE WITNESS:** I believe that Dr. Evans has  
08:54:49 3 information.

08:54:52 4 **THE COURT:** Did you rely on Dr. Evans in establishing  
08:54:55 5 your opinions?

08:54:55 6 **THE WITNESS:** I relied on Dr. Evans for the market  
08:55:01 7 definition and for the -- the switching costs and the -- the  
08:55:10 8 market power in both the -- the foremarket and the  
08:55:14 9 aftermarket.

08:55:15 10 **THE COURT:** Did you review data and did you analyze  
08:55:18 11 data?

08:55:18 12 **THE WITNESS:** I did not do original analysis of data.

08:55:22 13 **THE COURT:** And there's no data attached to your  
08:55:23 14 report?

08:55:24 15 **THE WITNESS:** No -- no original data, no.

08:55:28 16 **THE COURT:** All right. Thank you.

08:55:29 17 **BY MR. EVEN:**

08:55:46 18 **Q.** You were also asked some questions about DX5612 and --  
08:55:56 19 which talked about some bad news and good news about switching  
08:56:02 20 between iOS and Android.

08:56:04 21 Do you remember that?

08:56:05 22 **A.** Yes.

08:56:16 23 **Q.** And in the good news, it said -- and I'm reading from  
08:56:23 24 it -- "These days, most major productivity apps are readily  
08:56:28 25 available on both platforms. And once you are all set up with